

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 19, 2012

2:11 p.m.

MEMBERS PRESENT

Representative Steve Thompson, Vice Chair
Representative Wes Keller
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Carl Gatto, Chair
Representative Mike Hawker (alternate)

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 89(JUD)

"An Act clarifying that a legislator or legislative employee is allowed to accept certain compassionate gifts; allowing legislators and legislative employees who are representing persons in an administrative hearing to contact hearing officers and attempt to influence the outcome of the hearing if they are professionals licensed in the state, and allowing legislators and legislative employees who are not professionals licensed in the state to contact hearing officers for the purpose of influencing the outcome of the hearing in certain instances; requiring the Select Committee on Legislative Ethics to maintain a refrain from disclosure under the Legislative Ethics Act; relating to the applicability of certain provisions of the Legislative Ethics Act to certain legislative employees, volunteers, and interns; establishing a seat for an alternate public member on the Select Committee on Legislative Ethics; clarifying the requirements related to participation by alternate public members and alternate legislative members in the proceedings of the committee; amending the definition of 'legislative employee' in the Legislative Ethics Act; and repealing a procedure for appointment of alternate legislative members."

- HEARD & HELD

HOUSE BILL NO. 359

"An Act relating to conspiracy to commit human trafficking in the first degree or sex trafficking in the first degree; relating to the crime of furnishing indecent material to minors, the crime of online enticement of a minor, the crime of prostitution, and the crime of sex trafficking; relating to forfeiture of property used in prostitution offenses; relating to sex offender registration; relating to testimony by video conference; adding Rule 38.3, Alaska Rules of Criminal Procedure; and providing for an effective date."

- MOVED CSHB 359(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 89

SHORT TITLE: LEGISLATIVE ETHICS ACT

SPONSOR(S): SENATOR(S) COGHILL

02/16/11	(S)	READ THE FIRST TIME - REFERRALS
02/16/11	(S)	STA, JUD
03/15/11	(S)	STA AT 9:00 AM BUTROVICH 205
03/15/11	(S)	Heard & Held
03/15/11	(S)	MINUTE(STA)
03/31/11	(S)	STA AT 9:00 AM BUTROVICH 205
03/31/11	(S)	Moved CSSB 89(STA) Out of Committee
03/31/11	(S)	MINUTE(STA)
04/01/11	(S)	STA RPT CS 1DP 4NR NEW TITLE
04/01/11	(S)	DP: MEYER
04/01/11	(S)	NR: WIELECHOWSKI, KOOKESH, PASKVAN, GIESSEL
04/11/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/11/11	(S)	Scheduled But Not Heard
04/13/11	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/13/11	(S)	Scheduled But Not Heard
04/15/11	(S)	JUD AT 1:30 PM BUTROVICH 205
04/15/11	(S)	Heard & Held
04/15/11	(S)	MINUTE(JUD)
01/18/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
01/18/12	(S)	Heard & Held
01/18/12	(S)	MINUTE(JUD)
01/27/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
01/27/12	(S)	Moved CSSB 89(JUD) Out of Committee
01/27/12	(S)	MINUTE(JUD)
01/30/12	(S)	JUD RPT CS 3DP NEW TITLE
01/30/12	(S)	DP: FRENCH, COGHILL, PASKVAN
02/08/12	(S)	TRANSMITTED TO (H)
02/08/12	(S)	VERSION: CSSB 89(JUD)

02/09/12 (H) STA AT 8:00 AM CAPITOL 106
02/09/12 (H) <Bill Hearing Rescheduled to 02/16/12>
02/10/12 (H) READ THE FIRST TIME - REFERRALS
02/10/12 (H) STA, JUD
02/16/12 (H) STA AT 8:00 AM CAPITOL 106
02/16/12 (H) Heard & Held
02/16/12 (H) MINUTE(STA)
03/06/12 (H) STA AT 8:00 AM CAPITOL 106
03/06/12 (H) Moved HCS CSSB 89(STA) Out of Committee
03/06/12 (H) MINUTE(STA)
03/08/12 (H) STA RPT HCS(STA) 3DP 1NR
03/08/12 (H) DP: P.WILSON, SEATON, PETERSEN
03/08/12 (H) NR: KELLER
03/19/12 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 359

SHORT TITLE: SEX CRIMES; TESTIMONY BY VIDEO CONFERENCE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/22/12 (H) READ THE FIRST TIME - REFERRALS
02/22/12 (H) JUD, FIN
03/05/12 (H) JUD AT 1:00 PM CAPITOL 120
03/05/12 (H) Heard & Held
03/05/12 (H) MINUTE(JUD)
03/14/12 (H) JUD AT 1:00 PM CAPITOL 120
03/14/12 (H) Heard & Held
03/14/12 (H) MINUTE(JUD)
03/16/12 (H) JUD AT 1:00 PM CAPITOL 120
03/16/12 (H) Heard & Held
03/16/12 (H) MINUTE(JUD)
03/19/12 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

RYNNIEVA MOSS, Staff
Senator John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 89 on behalf of the sponsor,
Senator Coghill.

PAMELA FINLEY, Revisor of Statutes
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: On behalf of the bill drafter, responded to questions and provided comments during discussion of SB 89.

JOYCE ANDERSON, Ethics Committee Administrator
Select Committee on Legislative Ethics
Alaska State Legislature
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of SB 89.

RICHARD SVOBODNY, Deputy Attorney General
Central Office
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 359.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to a question during discussion of HB 359.

DOUGLAS GARDNER, Director
Legal Services
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 359.

ACTION NARRATIVE

[2:11:17 PM](#)

VICE CHAIR STEVE THOMPSON called the House Judiciary Standing Committee meeting to order at 2:11 p.m. Representatives Thompson, Gruenberg, Holmes, Keller, and Pruitt were present at the call to order. Representative Lynn arrived as the meeting was in progress. Representative Gatto was excused.

SB 89 - LEGISLATIVE ETHICS ACT

[2:11:51 PM](#)

VICE CHAIR THOMPSON announced that the first order of business would be CS FOR SENATE BILL NO. 89(JUD), "An Act clarifying that a legislator or legislative employee is allowed to accept certain compassionate gifts; allowing legislators and legislative employees who are representing persons in an administrative hearing to contact hearing officers and attempt to influence the outcome of the hearing if they are professionals licensed in the state, and allowing legislators and legislative employees who are not professionals licensed in the state to contact hearing officers for the purpose of influencing the outcome of the hearing in certain instances; requiring the Select Committee on Legislative Ethics to maintain a public record of certain ethics disclosures made by legislators and legislative employees; prohibiting a public member of the Select Committee on Legislative Ethics from disclosing confidential information without authorization; clarifying the ethics disclosure requirements for tickets to or gifts in connection with charity events; amending disclosure deadlines under the Legislative Ethics Act; relating to requests to refrain from disclosure under the Legislative Ethics Act; relating to the applicability of certain provisions of the Legislative Ethics Act to certain legislative employees, volunteers, and interns; establishing a seat for an alternate public member on the Select Committee on Legislative Ethics; clarifying the requirements related to participation by alternate public members and alternate legislative members in the proceedings of the committee; amending the definition of 'legislative employee' in the Legislative Ethics Act; and repealing a procedure for appointment of alternate legislative members." [Before the committee was HCS CSSB 89(STA).]

[2:12:12 PM](#)

RYNNIEVA MOSS, Staff, Senator John Coghill, Alaska State Legislature, on behalf of the sponsor, Senator Coghill, explained that SB 89 - proposing changes to AS 24.60, the Legislative Ethics Act - is the product of discussions with the Select Committee on Legislative Ethics over the years regarding certain issues it's had to address. Section 1 of HCS CSSB 89(STA) adds [accepting] compassionate gifts to the list of exceptions to prohibited conduct, thereby addressing an oversight that occurred when the legislation regarding compassionate gifts was initially passed. Section 2 of the bill provides exceptions to the prohibition against involvement by legislators and legislative employees in administrative hearings. Under Section 2, one would be permitted to be

involved in an administrative hearing if one is representing another person for compensation as a licensed professional; if one's contact is made in the presence of all parties while one is acting as a party or a witness or is responding to questions posed by the adjudicating authority and the contact is made part of the record; or if one's contact is inadvertent and ex parte and its fact and substance are promptly disclosed to all parties and made part of the record. Section 3 defines the term, "administrative hearing" as that term is used in AS 24.60.030.

MS. MOSS explained that Section 4 eliminates the requirement that the Select Committee on Legislative Ethics compile a list of financial [disclosure] statements; public access to those statements must be maintained, however, and the information included therein must still be forwarded to the presiding officers for inclusion in the legislative journals. Section 5 adds public members of the Select Committee on Legislative Ethics to the statute prohibiting disclosure of confidential information. [Sections 6 and 7 together] clarify that tickets to charity events and any gifts such tickets entitle the bearer to may be accepted but if from a lobbyist cannot exceed \$249.99 in aggregate value in a calendar year. Section 8 provides conforming changes regarding such charitable items, and extends, from 30 days to 60 days, the reporting period for disclosing certain gifts as outlined therein. Section 9 replaces the term, "trainee", with the term, "legislative intern"; this is a conforming change that's also been made elsewhere in the bill. Section 10 adds a new provision stipulating that if one is required under AS 24.60 to make a certain disclosure but doing so would violate federal or other state law, then one may request and [perhaps] receive a waiver from such disclosure.

[2:21:12 PM](#)

MS. MOSS explained that Section 11 provides the aforementioned additional conforming change regarding legislative interns, additionally stipulating that they must also comply with the statutory requirements of AS 24.60.155 - addressing legislative ethics training. Sections 12 and 13 add a reference to a new statute being added by Section 14 regarding alternate members of the Select Committee on Legislative Ethics. Section 14 provides new requirements for alternate members, including that an alternate public member be appointed. Under existing statute, alternates are appointed for the legislative members of the Select Committee on Legislative Ethics, but not for the public members, and yet two quorums - one for the public members and one for the legislative members - must be established in order

for the Select Committee on Legislative Ethics to conduct business. Establishing those two quorums has not always been possible, and so providing for an alternate public member as Section 14 is proposing would help ensure that the statutory quorum requirements are met. Section 14 also stipulates that when an alternate has been designated to participate in a particular proceeding, he/she must participate for the duration of that proceeding.

MS. MOSS explained that [Section 15] addresses the statutory definition of the term, "legislative employee", proposing to replace a list of certain employees who are not considered to be legislative employees in that they perform functions that are only incidental to legislative functions, with the term, "hourly employees". Section 16 repeals AS 24.60.130(n), the existing provision addressing alternate members of the Select Committee on Legislative Ethics.

[2:30:22 PM](#)

MS. MOSS - in response to questions about Section 2's proposed exception to the prohibition against being involved in an administrative hearing so long as one's contact is inadvertent and ex parte and its fact and substance are promptly disclosed to all parties and made part of the record - explained that under current law, once an administrative hearing process begins, any contact, whether direct or indirect, with the adjudicating authority would be an ethics violation. Under the bill, in contrast, one could simply notify all the parties that the contact occurred and was accidental.

REPRESENTATIVE PRUITT pointed out, though, that in such a situation, one might not know all the parties involved, and so questioned how one could comply with the disclosure requirements of that provision without first becoming further involved - for example, making further contact while researching who to disclose the initial contact to - and thereby committing further violation.

MS. MOSS ventured that perhaps it would be sufficient to notify the pertinent department, the adjudicating authority, the Department of Law (DOL), and the Department of Administration (DOA).

REPRESENTATIVE HOLMES expressed concern that one would never know that one has to take those disclosure steps if, after making inadvertent ex parte contact in writing, no one ever

responds to explain that an administrative hearing process had begun.

2:39:28 PM

PAMELA FINLEY, Revisor of Statutes, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA) - on behalf of the bill drafter of SB 89 and in response to questions - explained that Section 3's proposed definition of the term, "administrative hearing" was taken from AS 44.64.200, the definition section of the statute addressing administrative hearing officers and the office of administrative hearings. She acknowledged, however, that the committee could choose to delete Section 3's proposed stipulation that a rate-making proceeding is not an administrative hearing for purposes of AS 24.60.030, the Legislative Ethics Act's provision addressing prohibited conduct and conflicts of interest.

REPRESENTATIVE GRUENBERG expressed interest in making such a change, opining that just as with administrative hearings, legislators shouldn't become involved in rate-making proceedings either.

REPRESENTATIVE HOLMES expressed a preference for leaving Section 3 as currently written, venturing that perhaps in some situations, it would be appropriate for legislators to become involved in proceedings that affect the rates their constituents pay.

MS. FINLEY - in response to Representative Pruitt's point regarding Section 2's proposed exception to the prohibition against being involved in an administrative hearing so long as one's contact is inadvertent and ex parte and its fact and substance are promptly disclosed to all parties and made part of the record - explained that that exception is tied to the prohibition, the language of which stipulates that a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing. She surmised, therefore, that simply asking who the parties are in order to comply with Section 2's proposed disclosure requirements wouldn't constitute a further violation of the law because such inquiry wouldn't be an attempt to influence the outcome of the hearing, and because disclosing the initial contact to all the parties would be required. She acknowledged, however, that if the names of the parties haven't been made public for some reason, then complying with those disclosure requirements could be problematic.

VICE CHAIR THOMPSON observed that under the language of the prohibition, in order for there to be a violation, one would have had to contact, or attempted to contact, the adjudicating authority, and since one wouldn't bother to do so unless one knew that an administrative hearing process had begun, the contact wouldn't really be inadvertent and thus the exception wouldn't apply.

[2:50:27 PM](#)

MS. MOSS, in response to comments, offered her belief that contact alone wouldn't necessarily constitute a violation - one would also have to be trying to influence the outcome of an administrative hearing via that contact or attempted contact in order for there to be a violation.

REPRESENTATIVE HOLMES suggested amending Section 2 so as to address situations in which there are parties whose names have not been made public: for example, perhaps by adding a stipulation that in such instances, it shall be the department or adjudicating authority that informs the unnamed parties of the inadvertent ex parte contact.

MS. MOSS acknowledged that point.

MS. FINLEY, in response to comments, concurred with Ms. Moss that in order for there to be a violation, one would have to be attempting to influence the outcome of an administrative hearing via the contact or attempted contact. Therefore, Ms. Finley surmised, if one is never informed that an administrative hearing process has begun, it would be hard to view one's inadvertent contact as an attempt to influence the hearing's outcome.

REPRESENTATIVE HOLMES expressed interest in clarifying under what circumstances disclosure of the inadvertent ex parte contact or attempted contact would be required.

[2:55:51 PM](#)

JOYCE ANDERSON, Ethics Committee Administrator, Select Committee on Legislative Ethics, Alaska State Legislature, indicated that the Select Committee on Legislative Ethics has already issued an advisory opinion stating that making proper disclosure to all parties is the responsibility of the legislator or legislative employee who made the initial contact, including finding out exactly who to disclose that contact to. She acknowledged,

though, that one issue which perhaps ought to be addressed is that of who would notify any unnamed parties - for example, when that information is being kept confidential for some reason. With regard to the concern that one might be left nescient about whether an administrative hearing process has begun, she also indicated that before beginning work on a constituent's problem, it's the legislator or legislative employee's responsibility to contact the administration to find out if such a process has already begun; furthermore, staff to the adjudicating authority are able to answer such inquiries.

MS. ANDERSON, in response to questions and comments, relayed that Section 2 addresses administrative hearings at the state level, not at the local level; that whether to expand the provision to include administrative hearings at the local level would be a policy call for the legislature to make; that [AS 24.60.080(h)] stipulates that legislators may accept gifts of services from volunteers and trainees, with the term, "trainee" being changed via Section 9 to the term, "legislative intern"; that an advisory opinion issued many years ago by the Select Committee on Legislative Ethics indicates that such gifts from volunteers are considered gifts, and that such gifts from legislative interns are considered an exchange of services; and that the definition change proposed via Section 15 addresses the fact that the Select Committee on Legislative Ethics feels that certain employees who perform functions incidental to legislative functions should not be required to take legislative ethics training.

REPRESENTATIVE GRUENBERG expressed disfavor with using only the criterion of being an hourly employee.

MS. ANDERSON pointed out that the other criterion Section 15 provides for is that it be an employee who performs functions incidental to legislative functions.

VICE CHAIR THOMPSON, after ascertaining that no one else wished to testify, closed public testimony on SB 89.

[3:10:20 PM](#)

VICE CHAIR THOMPSON made a motion to adopt Amendment 1, labeled 27-LS0452\0.1, Wayne, 3/14/12, which read:

Page 13, following line 16:

Insert a new bill section to read:

**** Sec. 15.** AS 24.60.260(a) is amended to read:

(a) A person required to make a disclosure under this chapter may not knowingly make a false or deliberately misleading or incomplete disclosure to the committee or to the Alaska Public Offices Commission. A person who files a disclosure after a deadline set by this chapter or by a regulation adopted [BY THE COMMITTEE OR] by the Alaska Public Offices Commission has violated this chapter and may be subject to imposition of a fine as provided in (c) of this section or AS 24.60.240."

Renumber the following bill sections accordingly.

REPRESENTATIVE KELLER objected for the purpose of discussion.

VICE CHAIR THOMPSON explained that Amendment 1 - proposing to add a new Section 15 and renumber the remaining sections - would alter existing AS 24.60.260 [addressing prohibited conduct related to disclosures, and the penalties for such conduct] such that it's subsection (a) would no longer reference regulations adopted by the Select Committee on Legislative Ethics.

REPRESENTATIVE HOLMES offered her understanding that Amendment 1 is warranted because the Select Committee on Legislative Ethics doesn't have the authority to promulgate regulations and so any reference to such regulations is unnecessary and potentially misleading.

MS. MOSS concurred.

REPRESENTATIVE KELLER removed his objection to the motion to adopt Amendment 1.

REPRESENTATIVE GRUENBERG questioned whether there would be any benefit to providing the Select Committee on Legislative Ethics with such authority.

MS. ANDERSON posited that that would be something for the Select Committee on Legislative Ethics to discuss.

REPRESENTATIVE GRUENBERG stated that he wasn't going to object to Amendment 1.

VICE CHAIR THOMPSON ascertained that there were no further objections to the motion, and announced that Amendment 1 was adopted.

[3:12:51 PM](#)

VICE CHAIR THOMPSON made a motion to adopt Amendment 2, labeled 27-LS0452\0.2, Wayne, 3/14/12, which read:

Page 11, line 8:

Following "**interns**":

Insert "**and volunteers**"

Following "intern":

Insert "or legislative volunteer"

Page 11, line 11, following "intern":

Insert "or legislative volunteer"

REPRESENTATIVE KELLER objected for the purpose of discussion.

VICE CHAIR THOMPSON explained that Amendment 2 would alter Section 11 such that its proposed AS 24.60.112 would address both legislative volunteers and legislative interns.

The committee took an at-ease from 3:13 p.m. to 3:14 p.m.

VICE CHAIR THOMPSON added that under Amendment 2, legislative volunteers would be subject to the same ethics rules as legislative interns.

MS. MOSS - noting that the reference in AS 24.60.112 to legislative volunteers was removed in the prior committee - indicated that the sponsor would be amenable to having proposed AS 24.60.112 apply to both legislative interns and legislative volunteers, since both have access to confidential information and the use of state equipment.

VICE CHAIR THOMPSON agreed.

REPRESENTATIVE GRUENBERG said he supports Amendment 2.

MS. MOSS, in response to a question and comments, explained that at one point, the bill's proposed AS 24.60.112 stipulated that one would have to work more 30 days before having to comply with AS 24.60.112's referenced statutes; although that stipulation has since been removed, the committee could amend the bill to add a specific time period back in.

REPRESENTATIVE HOLMES expressed favor with doing so.

VICE CHAIR THOMPSON, in response to a request, relayed that the motion to adopt Amendment 2 would be tabled, and that HCS CSSB 89(STA) [as amended] would be held over.

HB 359 - SEX CRIMES; TESTIMONY BY VIDEO CONFERENCE

[3:17:47 PM](#)

VICE CHAIR THOMPSON announced that the final order of business would be HOUSE BILL NO. 359, "An Act relating to conspiracy to commit human trafficking in the first degree or sex trafficking in the first degree; relating to the crime of furnishing indecent material to minors, the crime of online enticement of a minor, the crime of prostitution, and the crime of sex trafficking; relating to forfeiture of property used in prostitution offenses; relating to sex offender registration; relating to testimony by video conference; adding Rule 38.3, Alaska Rules of Criminal Procedure; and providing for an effective date." [Included in members' packets was a proposed committee substitute (CS) for HB 359, Version 27-GH2627\M, Gardner, 3/17/12, that incorporated amendments adopted during previous hearings on the bill.]

REPRESENTATIVE GRUENBERG explained that in drafting a committee substitute (CS), a change was made by the drafter to address a problem with hand-altered Amendment 3, as amended, that being that in amending Section 6's proposed new AS 11.66.100(c)(1) - pertaining to the crime of prostitution - the word, "patronizes" should not have replaced the phrase, "is a patron of". He referred to a memorandum from Legislative Legal and Research Services dated March 18, 2012, in members' packets that explained the rationale for not using the word, "patronizes".

REPRESENTATIVE GRUENBERG moved to adopt the proposed CS for HB 359, Version 27-GH2627\M, Gardner, 3/17/12, as the working document.

REPRESENTATIVE HOLMES objected and questioned whether Version M contained all the other amendments adopted previously.

REPRESENTATIVE GRUENBERG confirmed that it did.

REPRESENTATIVE HOLMES removed her objection.

VICE CHAIR THOMPSON announced that Version M was before the committee.

[3:21:22 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 13, labeled 27-GH2627\M.2, Gardner, 3/19/12, which read:

Page 4, lines 9 - 10:

Delete "material is [TO ANOTHER PERSON ANY]
material that the person knows"

Insert "person knows that the material [TO
ANOTHER PERSON ANY MATERIAL THAT]"

[Note to the reader: Amendment 13 was the first amendment to Version M of HB 359.]

REPRESENTATIVE HOLMES and VICE CHAIR THOMPSON objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG explained that Amendment 13 simply provides alternative phrasing for the stipulation outlined in paragraph (2) of Section 4's proposed AS 11.61.128(a), which addresses the crime of distribution of indecent material to minors.

VICE CHAIR THOMPSON removed his objection, ascertained that no other objection was maintained, and announced that Amendment 13 was adopted.

[3:23:26 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 14, labeled 27-GH2627\M.3, Gardner, 3/19/12, which read:

Page 7, line 5:

Delete "AS 11.66.100 - 11.66.135"

Insert "AS 11.66.100(c) and 11.66.110 -
11.66.135"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG explained that Amendment 14 would change the statutory references in Section 13's proposed AS 11.66.145 - which mandates that property used to institute, aid, or facilitate, or property received or derived from, a violation of certain laws shall be forfeited - such that that forfeiture provision would then only apply to Section 6's proposed class C felony crime of being the "patron" of a prostitute who is under 18 years of age while being at least

three years older than his/her victim, and to the first, second, third, and fourth degree crimes of promoting prostitution, which HB 359 is proposing to change to the first, second, third, and fourth degree crimes of sex trafficking. It is not the committee's intention for that forfeiture provision to apply to the class B misdemeanor crimes of prostitution, and Amendment 14 would ensure that it doesn't.

REPRESENTATIVE HOLMES removed her objection.

VICE CHAIR THOMPSON ascertained that there were no further objections, and announced that Amendment 14 was adopted.

[3:25:18 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 15, to add to Section 16's proposed new AS 12.47.100(h) - addressing testimony from a witness by contemporaneous two-way video conference in a pretrial hearing to determine a defendant's competency to stand trial - a comma on page 8, line 27, after the word "court" and before the phrase, "and the procedure allows"; Conceptual Amendment 15 would address a grammatical issue in the first sentence of proposed subsection (h).

REPRESENTATIVE KELLER objected, sought and received information regarding the location of Conceptual Amendment 15's proposed change, and then removed his objection.

VICE CHAIR THOMPSON ascertained that there were no further objections, and announced that Conceptual Amendment 15 was adopted.

[3:27:01 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 16, labeled 27-GH2627\M.1, Gardner, 3/19/12, which read:

Page 12, line 14, following "minor":
Insert "under AS 11.41.452(e)"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG mentioned that the aforementioned Legislative Legal and Research Services' memorandum addresses the need for Amendment 16's proposed change to Section 19's proposed AS 12.55.185(10) - which defines the term "most serious

felony" for purposes of sentencing and probation under AS 12.55 - and indicated that under Amendment 16, only the class A felony crime of online enticement of a minor would be added to paragraph (10)'s definition.

REPRESENTATIVE HOLMES removed her objection.

VICE CHAIR THOMPSON, after ascertaining that there were no further objections, announced that Amendment 16 was adopted.

VICE CHAIR THOMPSON then noted that public testimony on HB 359 had previously been closed.

REPRESENTATIVE HOLMES referred to Section 16, and offered her understanding that its proposed new AS 12.47.100(h) - addressing testimony from a witness by contemporaneous two-way video conference in a hearing to determine a defendant's competency to stand trial - might raise constitutional issues depending upon whether a competency hearing would be considered enough like a criminal trial to warrant providing for the person's constitutional rights to confront the witnesses against him/her.

[3:33:34 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), referred to an amendment in members' packets proposing to replace subsection (h)'s stipulation requiring that any such witness be in a place from which people customarily travel by air to the court, with an alternative stipulation that the court must find that allowing a witness's testimony by contemporaneous two-way video conference is necessary to further an important public policy, and indicated that the DOL's position is that such an amendment is not necessary; that amendment read [original punctuation provided]:

Page 8, lines 26-27, following "if the":
delete "witness is in a place from which people customarily travel by air to the court"
insert "court finds that doing so is necessary to further an important public policy"

[3:34:00 PM](#)

RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), offered his understanding that both the Supreme Court of California and the

9th Circuit Court of Appeals have ruled that under California law, competency hearings are like civil matters; that almost all states have said that competency hearings are different than criminal trials in that not all constitutional rights apply; and that no case has directly addressed the issue of whether the constitutional rights to confront the witnesses against oneself apply in competency hearings. Competency hearings are not like criminal trials, he asserted, since the question being addressed is different, the burden of going forth could be borne by a different party, and the standard of proof is different. The state's view, he indicated, is that contemporaneous two-way video conference technology is sufficient to provide for the constitutional rights to confront the witnesses against oneself, if indeed such rights must be provided for in competency hearings; the goal with the bill's proposed change to AS 12.47.100 is to make the most efficient use of the state's very limited resources during competency hearings, the number of which has quadrupled since the late 1990s, early 2000s.

MS. CARPENETTI, in response to a question, mentioned that members' packets contain the aforementioned 9th Circuit Court of Appeals case, Nguyen v. Garcia, decided in 2007; and a U.S. District Court case from Maine, United States v. Burhoe, decided in 2008.

[3:42:57 PM](#)

DOUGLAS GARDNER, Director, Legal Services, Legislative Legal and Research Services, Legislative Affairs Agency (LAA) - referring to a letter from the American Civil Liberties Union of Alaska (ACLU of Alaska) in members' packets - surmised that Section 16's proposed AS 12.47.100(h) is likely to engender litigation, with the issue still to be resolved being that of whether the constitutional rights to confront the witnesses against oneself apply in competency hearings.

REPRESENTATIVE HOLMES mentioned that she wouldn't be offering the aforementioned amendment to Section 16's proposed AS 12.47.100(h).

[3:49:12 PM](#)

REPRESENTATIVE KELLER moved to report the proposed CS for HB 359, Version 27-GH2627\M, Gardner, 3/17/12, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection,

CSHB 359(JUD) was reported from the House Judiciary Standing Committee.

[3:49:44 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:49 p.m.